SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 945

CLIFFORD COLLINS, ET AL.,
(Libellants-Appellees Below),
Petitioners,

versus

SOCONY-VACUUM OIL COMPANY, INC.,
(Respondent-Appellant Below),
Respondent.

BRIEF IN SUPPORT OF PETITION.

POINT ONE.

It being undisputed that the petitioners were on the vessels when they called at Santa Cruz de Tenerife, a Spanish Port, and the contract clearly provided for a fifty dollar bonus to each member of the crew in the event the vessels called at Spanish ports, petitioners are entitled to recover under the contracts.

During June and July, 1938, the Steamships "India Arrow" and "Java Arrow" owned by respondent proceeded to make a trip from ports in the United States to the ports in

the Mediterranean, Haifa, Palestine and thence to Santa Cruz de Tenerife, Canary Islands, Spain and back to the United States. At that time the prelude to the present internation conflagration was in full swing. The aggressors of today were testing their tools of war upon the soil of the Spanish Republic in order to perfect their deadly machinery they are now using in their attempt to destroy our civilization. The Spanish Civil War was of such moment and involved such danger to shipping and mariners that all steamship companies operating vessels in waters contiguous to the nations involved awarded special compensation to American merchant seamen who were employed on vessels that would either pass through territorial waters of such belligerent nations or enter into ports belonging to such belligerent nations. So widespread and notorious was the serious condition then existing that the United States Maritime Commission issued a press release as of September 23, 1937, also offording protection to seamen employed on ships *operated by it.* Respondent, a Socony-Vacuum Oil Company, Inc., owners and operators of a large fleet of seagoing tankers carrying gas, oil and its derivatives to and from ports of the United States and European ports and ports all over the world, also made trips to ports in the Mediterranean, ports in Spain, Haifa, Palestine and other ports of the world. On many occasions it was not known prior to departure whether the vessels would enter Spanish ports or not, so in order to meet such contingency in the event of any change of schedule while the vessel is en route they entered into a written contract with the National Maritime Union to which these petitioners belonged, agreeing as follows:

"June 5, 1938.

"1. Effective with the sailing of the SS India Arrow, all unlicensed personnel are to receive $5.00 increase per month in pay in lieu of accident or other special

compensation insurance for such personnel, and therefore all demands for insurance are hereby withdrawn.

"2. Effective with the sailing of the SS India Arrow the unlicensed personnel of this ship should it call at Spanish Ports, will be awarded $50.00 bonus for the trip until such time as the U. S. Maritime Commission cancels similar basis applicable to Government operated ships which might call at Spanish Ports.

"3. It is agreed that no bonus will be paid unless the SS India Arrow calls at Spanish Ports.

"4. Should the SS India Arrow operated by this Company be arrested or interned because of the war hazards the Socony-Vacuum Oil Company, Inc., Marine Transportation Department agrees to pay the crew their regular wages during the period of arrest or internment."

On June 17, 1938, exactly the same agreement was signed by the petitioners with reference to the SS Java Arrow.

During the voyages in question the SS "India Arrow" and SS "Java Arrow" called at the port of Santa Cruz de Tenerife, Canary Islands, Spain, delivering gasoline, oil and its derivatives to a refinery located there. Upon the completion of the voyages and the vessels' arrival in the United States the members of the crew of the above named vessels requested compliance with the contract hereinabove quoted in addition to their reguar wages. This request was refused them, hence this action. There are other vessels which have executed similar contracts after March 1938, all of which vessels entered the port of Santa Cruz de Tenerife, Canary Islands, Spain, and for all of whom there are now libels pending in the United States District Court for the Southern District of Texas, Houston Division, seeking recovery of the Fifty ($50.00) Dollar bonus agreed upon.

Cause No. 547 in Admiralty, *Clifford Collins, et al.* v. *SS "India Arrow"* and Cause No. 552 in Admiralty, *Mario R. Cascio, et al.* v. *SS "Java Arrow,"* in which these

petitioners were libelants, were consolidated and tried, and the District Court below, as hereinabove set out, rendered judgment in favor of Libellants, but the Circuit Court of Appeals reversed the District Court denying recovery and ordering dismissal of the libels. The remaining actions now pending in the District Court below are awaiting the disposition of this cause before this Honorable Court before proceeding to trial.

A simple reading of the contracts upon which this action is brought reveals but two questions which need be answered in order to arrive at a proper determination of this action. (1) Is Santa Cruz de Tenerife a Spanish Port or not? (2) Were Libellants members of the crew of the two vessels when the vessels called at this port? If the questions are answered in the affirmative, the libellants are entitled to their judgment. If in the negative, they are not. The evidence is undisputed that the Port of Santa Cruz de Tenerife is a Spanish Port and is so designated by the United States Hydrographic Office, and is so reported in Encyclopedias, and in this instance was so regarded by the District Court, by the Circuit Court as well as by Appellant and Appellees in the Trial Court. This being the state of the record, it seems that no further discussion is necessary. Moreover, Respondent itself admits in its Amended Answer appearing on pages 11 and 26 of the Record, paragraph 2 thereof, and on pages 13 and 28, wherein Libellants plead that the Port of Santa Cruz de Tenerife is a Spanish Port * * * It is true that Respondent claims that the words "Spanish Port" in the instrument refer to "Spanish Ports" in a general way and not in a specific sense, and is not a Spanish port within the terms of the agreement made.

However, the parol evidence rule seems to fully and completely apply to this type of a clear and unambiguous contract, i. e., that parol evidence will not be permitted to change, vary or modify the legal import of a plainly written

instrument. In construing a written contract presumption is in favor of a comprehensive interpretation rather than a restrictive one, general over a particular, and a common over an unusual sense word. *Auerback* v. *Mr. & Mrs. Fosters Place,* 220 N. Y. Supp. 281. This rule is so well established that it would be useless to point out to the Court numerous cases reiterating this simple principle of contract law. The language of the contracts sued upon is general, i. e., Spanish Ports, there being no exceptions in it, no specific port or ports set out, the words by necessity must be construed in a general sense, and by necessity include any Spanish ports. Such an interpretation is the only logical one that reasonable minds can reach. Moverover, respondent's pleading on which it went to trial, having admitted that Santa Cruz de Tenerife was a Spanish Port, libellants were entitled to a judgment on the pleading. *Ferguson* v. *Read,* 45 Tex. 574, (Writ of Error Dismissed); *Heid Bros.* v. *Riesto,* 281 S. W. 638, (Rehearing Denied); *Texas Jurisprudence, Evidence, Civil Cases,* Volume 17, page 572, Sec. 237; *Texas Jurisprudence,* Volume 33, Section 191, page 647; *Ruling Case Law,* Volume 21, Section 120, page 561; *American Jurisprudence,* Vol. 12, Sec. 236, page 758. Furthermore, the Court will take judicial knowledge of the fact that Santa Cruz de Tenerife is a Spanish Port. The Federal Courts and in general all Courts of the United States will take judicial knowledge of the existence of foreign governments, the identity of their colonies and their political dependencies, their ports of entry, etc. *Ennis* v. *Smith,* 14 Howard 400, U. S. S. Ct., wherein the Supreme Court took judicial notice that Lithuania was a Russian province governed by its own laws except as they may be modified by the emperor's edicts, *People* v. *De'Argentour,* 32 Hun. (N. Y.) 178, aff'd 95 N. Y. 624, the New York court took judicial notice that the Island of Cuba was a dependency of the Kingdom of Spain and subject to its government. In *Yuca-*

tan v. *Argumedo,* 92 Misc. Reps. 547, 157 N. Y. S. 219, the court took judicial knowledge of the port of entry of a foreign country.

The United States Supreme Court has many times reaffrmed this doctrine in the following cases:

Ricaud v. *The American Metal Co.,* 246 U. S. 304;
Oetjen v. *Central Leather Co.,* 246 U. S. 297;
Underhill v. *Hernandez,* 168 U. S. 250;
Jones v. *U. S.,* 137 U. S. 203;
U. S. v. *S. Palmer,* 3 Wheat. 610.

Since courts do take judicial notice of the nationality of ports as to whether or not they are Spanish Ports or ports of a different country, and respondent having admitted in its pleading that the port of Santa Cruz de Tenerife was a Spanish Port, petitioners herein, libellants below, were and are entitled to judgment on the pleading without the necessity of introducing any evidence on that point. The evidence, however, is ample and stands unchallenged sufficient to sustain the Court's findings on the first issue, *i. e.,* that Santa Cruz de Tenerife is a Spanish port.

POINT TWO.

The contracts sued upon having been written by respondent the provisions thereof should be construed strictly against it.

This principle of law is so clearly established that we are somewhat reluctant to present it to this Honorable Court. However, in view of the wholly unexpected view taken by the Circuit Court of Appeals we feel duty bound to point out the authorities upholding this rule.

The law furnishes certain rules for the construction of written contracts for the purpose of ascertaining from the language used in such contracts the extent to which the parties intended to be bound; but it is well established that the Court *will not resort to construction* where the intent

of the parties is expressed in *clear* and *unambiguous* language. In such circumstances the Court will enforce and give effect to the contract according to its terms, no contention having been made that there was any fraud or unfair method used when the contracts were entered into. The cardinal rule in the interpretation of contracts is to ascertain the intention of the parties and to give effect to that intention if it can be done consistently with legal principles. Whatever may be the inaccuracy of expressions or the inaptness of the words used in an instrument in a legal view, if the intention of the parties can be clearly discovered, the Court will give effect to it and construe the words accordingly. It must not be supposed, however, that an attempt is made to ascertain the actual mental process of the parties to a particular contract. The law presumes that the parties understood the import of their contract and that they have the intention which its terms manifest.

United States, ex rel, International Contracting Company v. *Lamont,* 155 U. S. 303; 39 L. Ed. 160, 16 S. Ct. 97;

Baltimore v. *Baltimore & Ohio Ry. Co.,* 10 Wall (U. S.) 543, 19 L. Ed. 1043;

Lee v. *State Bank & T. Co.* (C. C. A. 2nd. Circuit), 54 Fed. (2d) 518; 85 A. L. R. 216 (Writ of Certiorari Denied) 288 U. S. 547, 76 L. Ed. 958, 59 S. C. 395;

American Jurisprudence, Volume 12, Sec. 227, p. 747.

The entire record in those cases speak clearly that the parties were aware of a civil war existing within the Republic of Spain and its possessions. Because of the unusual circumstances respondent agreed to pay to petitioners the sum of Fifty ($50.00) Dollars each in the event the vessels called at Spanish Ports. From the contracts entered into there can be no doubt that the parties meant exactly what they said, *i. e.,* Spanish Ports. If respondent had some secret intention, or secret idea which it kept to itself,

regarding the meaning of Spanish Ports that certainly could not be controlling in the interpretation or construction of the contracts. It is not to be forgotten that respondent wrote the contracts and, therefore, it is to be construed strictly against it, since it chooses its own language, 10 *Texas Jurisprudence,* Sec. 162, p. 277; *Phillips* v. *Western Union,* 95 Tex. 628, 69 S. W. 63; *Whittington* v. *Cameron Compress Co.,* 280 S. W. 527, (Com. of App.); 56 *Corpus Juris,* page 932; *McDonald* v. *U. S.,* 292 Fed. 593, 594; *Marchand* v. *The Samuel Marshall,* 20 Can. Exch. 299, 67 Dom. L. R. 107, 110.

The United States Supreme Court in the case of *Calderon* v. *Atlas Steamship Company, Ltd.,* 170 U. S. 272; 18 S. Ct. 588, in reversing the Decree of the District Court and that of the Circuit Court of Appeals stated as follows with reference to the construction of contracts:

> "The plain and unequivocal meaning of these words is that the carriers shall not be liable to any amount for goods exceeding in value $100.00 per package. It is true that contracts for the carriage of goods by water, as well as by land, frequently contain a provision limiting the liability of the carrier to a certain amount, usually $100.00 per package, and it was apparently in view of this custom that the Courts below gave a like interpretation to the words of this stipulation. But this certainly does violence to its language. If it had been intended to so limit the respondent's liability, it would have been easy to say so, and the very fact that different language was used from that ordinarily employed indicates a desire on the part of the carrier to limit his liability to goods which are of less value than $100.00 per package. It is possible that the draughtsman of this bill of lading may have had the more common limitation in his mind, and may have intended that the carrier should incur a liability upon all goods to the extent of $100 per package, but he certainly was unfortunate in the language he chose for that purpose.
> • • •

"It is true that in cases of ambiguity in contracts, as well as in statutes, courts will lean towards the presumed intention of the parties or the legislature, and will so construe such contract or statute as to effectuate such intention; but *where the language is clear and explicit there* is no call for construction and this principle does not apply. Parties are presumed to know the force and effect of the language in *which they have chosen to embody their contracts,* and to refuse to give effect to such language might result in artfully misleading others who had relied upon the words being used in their ordinary sense. In construing contracts, words are to receive their plain and literal meaning, *even though the intention of the party drawing the contract may have been different from that expressed. A party to a contract is responsible for ambiguity in his own expressions,* and has no right to induce another to contract with him on the supposition that his words mean one thing while he hopes the court will adopt a construction by which they would mean another thing more to his advantage. Clark, Cont. p. 593.

"In this case the contract is one prepared by the respondent itself for the general purpose of its business. *With every opportunity for a choice of language,* it used a form of expression which clearly indicated its desire to exempt itself altogether from liability for goods exceeding $100.00 in value per package, and it has no right to complain if the courts hold *it to have intended what it so plainly expressed.* If the language had been ambiguous, we might have given it the construction contended for, which probably conforms more nearly to the clause ordinarily inserted in such cases, but such language is too clear to admit of a doubt of the real meaning. The clause in question seems to have been taken from the English carriers' Act * * *"

By reason of the above the decree of the District Court was reversed, and the case remanded to that Court, with directions to assess the value of the libellant's goods, and to enter a decree in conformity with the opinion of that court.

Other cases holding that the undisclosed intention is immaterial in the absence of mistakes, fraud and the like, and that the law imputes to a person an intention corresponding to the meaning of his words and act are as follows: *American Lumber & Mfg. Company* v. *Atlantic Mill & Lumber Co.* (C. C. A. Pennsylvania), 290 Fed. 632. If its words judged by a reasonable standard manifest an intention to agree in regard to the matter in question, that agreement is established and it is immaterial what may be the real, but unexpressed, state of his mind on the subject. 17 *Corpus Juris Secundum,* page 361, 362; *Zurich General Accident & Lia. Co.,* 22 Pac. (2d) 572, 573; *Chicago Bank & Commerce* v. *Craft,* 259 Ill. App. 295. Neither is a mental assent to the promises in a contract essential. *Preston* v. *Howell,* 257 N. W. 415, A. L. R. 1140.

Accordingly, we submit that the court should construe the contracts sued upon most favorably to the seamen, *i. e.,* the petitioners, and hold that they are entitled to recover on the contracts sued upon.

Point Three.

Acts and circumstances of March 11, 1938, involving another and different contract on other and different ships occurring some three months prior to the time the contracts in question were executed cannot and should not be considered in the construction of plain, unambiguous and clear language of the contracts sued upon, the Maritime Commission order of September 23, 1937, not being applicable.

The contracts sued upon having been written by respondent and presented to petitioners, the petitioners had a right to rely on the plain meaning of the words Spanish Ports, and it seems highly unfair, unjust and contrary to the established principles of admiralty to impose a strained and highly technical meaning upon the words Spanish Ports and separate what is ordinarily Spanish Ports into many cate-

gories and declare them fairly ambiguous as the Circuit Court of Appeals has done in these cases.

Assuming, however, for argument's sake only, that Spanish Ports may seem fairly ambiguous nevertheless the acts and circumstances that occurred on March 11, 1938, some two months, or more, prior to the time the contracts sued upon were entered into can not and should not be considered in the construction, if any construction be needed, of the contracts in question, for the following reasons: The evidence in this case (Tr. pp. 93, 99, 101 and 103) clearly shows that on March 11, 1938, the SS OLEAN departed from Boston to Santa Cruz de Tenerife, Spain, and that at that time the members of the crew regularly employed on that vessel insisted on the bonus of Fifty ($50) Dollars to each member of the crew if their vessel entered such ports which the company refused to pay. Thereafter *another crew* joined the OLEAN under another and *different contract* and not on exactly the same kind of contract as the one sued upon in these cases. (Tr. p. 103). Therefore, the record being clear and undisputed that the contract on March 11, 1938, with reference to the OLEAN being different from the ones sued upon, acts and circumstances with reference to that contract (March 11, 1938) after so much time has elapsed, during which time conditions might have changed as they actually did, the theatre of war enlarged, the propensity of the civil war exceedingly intensified, the dangers becoming more acute and the type of cargo that this vessel was carrying, *i. e.*, crude oil and other derivatives to a refinery—war material—the application of what may have transpired on March 11, 1938, to the contracts sued upon is unwarranted in law and establishes a dangerous precedent in construction of contracts, has the effect of impairing the obligation of a contract and opens a wide avenue of fraud and deceit to those who may seek to escape their obligation under a plainly written contract.

Neither has the Order of the Maritime Commission of March 23, 1937, any relevancy to the question involved because the contracts of the parties particularly limits the application of the Maritime Commission Order only as to *the time during which this contract is to exist.* At any rate, should the Maritime Commission Order have any relevancy whatsoever and have the effect of substituting the wording of that order to the language of the contract involved, then under the facts petitioners are entitled to recovery since it is obvious that under the Maritime Commission Order the mere entrance of the vessels into territorial waters of Spain entitles them to their bonus. It can not be denied that when the vessels in question entered into the Straits of Gibraltar, proceeded in the Mediterranean to ports in Genoa, Italy, they had to pass between the Spanish mainland and the Balearic Islands, and upon their return trip to Canary Islands, they had to follow the same route, so they are, therefore, entitled to their bonus under that order. Moreover the entry of the vessels into the Port of Santa Cruz de Tenerife, Canary Islands, Spain, also territorial waters of Spain, they are unquestionably entitled to the war bonus under such provision, if such order could be held applicable.

To permit respondent a rescission or reformation of the contracts at the present time on the ground that the words "Spanish Ports" are fairly ambiguous is further unjustified because the parties cannot be restored to the *status quo* before they entered into the contracts. The very idea of rescinding a contract or reforming it implies that what has been parted with shall be restored on both sides. Releasing one party from his part of the agreement and excusing him from making the other party whole will not seem agreeable to reason or justice. Hence the general rule is that the parties who wish to rescind or reform an agreement

must place the opposite party in *status quo,* which in this instance can not be done since petitioners have fully executed their part of the contract. *Pan American Petroleum & Transport Co.* v. *United States,* 273 U. S. 456; 71 L. Ed. 734, 47 S. Ct. 416; *Gay* v. *Alter,* 102 U. S. 79, 26 L. Ed. 48; *Young* v. *Bradley,* 101 U. S. 782, 25 L. Ed. 1044; *American Jurisprudence,* Volume 12, page 1031, *Red Cross Line* v. *Atlantic Fruit Co.,* 264 U. S. 109, 44 S. Ct. 274.

The District Court in its opinion adequately and properly holds that the contracts sued upon are plain, clear and unambiguous and that the order of the Maritime Commission, or any other contracts entered into months before the present contracts can not under the circumstances and should not be considered in the construction of the contracts in question.

POINT FOUR.

A court sitting in admiralty has no power or authority to reform or rescind a written contract.

It has been well established that an Admiralty Court while exercising its jurisdiction upon equitable principles, has not the characteristic powers of a court of equity. A court of admiralty cannot entertain a suit, although relating to maritime matters, for an injunction, *relief in case of mistake,* to declare or enforce a trust or an equitable title, reach and apply assets of a debtor, *or set aside an instrument,* nor can an admiralty court take cognizance of a suit *or a defense seeking reformation of a maritime contract.* A maritime court has not general equity jurisdiction, with respect to the exercise of *equitable powers to construe a contract as to reform a maritime agreement,* the decisions being uniform that an admiralty court has no such jurisdiction. The doctrine has been reaffirmed as late as *Rice* v. *Charles Dreifus Co.,* 98 F. (2d) 80, C. C. A., citing *United*

Transportation Co. v. *New York and Baltimore Railroad,* 185 Fed. 386, which contains an excellent collation of authorities on the point.

It is true, no doubt, that the admiralty has no jurisdiction over a libel to reform a written instrument. We respectfully submit that the court's action in this case was in effect a reformation of the instruments as written between the parties on June 5th and June 17th, 1938, respectively. Justice Storey so held in *Andrews* v. *Essex, Fire & Marine Insurance Co.* (1822), 3 Mason 6, Fed. Cases, No. 374, and this holding has been again and again approved to this time. The chief authority in the Supreme Court upon the incapability of an admiralty court to entertain equitable causes of action has been established in *The Eclipse,* 135 U. S. 599; 10 S. Ct. 873, 34 L. Ed. 269.

In *United Transportation Company* v. *New York* and *Baltimore Railroad,* 185 Fed. 386, Justice Learned Hand of the Second Circuit refused to consider on the merits a cross-libel depending upon the reformation of a contract before any relief could be granted.

From the cases hereinabove set out, it is respectfully submitted that a court sitting in Admiralty lacks jurisdiction to reform a maritime agreement and by reason thereof the judgment of the District Court should be in all things affirmed.

In accord are:

Simmons Transp. Co. v. *Alpha Portland Cement Co.,* 286 Fed. 955;

Williams v. *Providence Washington Ins. Co.,* 56 Fed. 159;

Benedict on Admiralty, Vol. 1, Sec. 70, p. 95, (Fifth Edition);

Corpus Juris Secundum, Vol. 2, pp. 101, 102;

Benedict on Admiralty, Sixth Edition, Vol. 1, p. 128,

wherein it is held that Admiralty has no jurisdiction to reform a policy, also,

Andrews v. *Essex Fire & Marine Insurance Co.* (1822), 3 Mason 6, Fed Cases No. 374 (C. C. A. Mass);

or to take cognizance of a mutual mistake.

If on the other hand our Admiralty Court has such jurisdiction and the term "Spanish Ports" may be held to be fairly ambiguous then this cause should be remanded to the District Court for further evidence on this point in view of the District Court's advising the parties during the trial of this cause that he would hold them to their contracts. That such procedure is proper is supported by the following authorities:

Calmar S. S. Corp. v. *Chas. W. Taylor,* 58 S. Ct. 641;
Smith v. *Elmer Wood Transp. Co.,* 103 Fed. 685;
The Carbonero (Mass.), 106 Fed. 329 (C. C. A., 5th Cir.);
The Glide, 72 Fed. 200.

POINT FIVE.

It is respectfully submitted that the petition should be granted.

MANDELL & WRIGHT,
Proctors for Petitioners.

HALL ETTER,
Counsel.
Dated: Houston, Texas, April 8, 1941.

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